

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 12, 2018

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

KRISTINA MARIE BROWN,

Plaintiff,

vs.

COMMISSIONER OF SOCIAL

SECURITY,

Defendant.

No. 2:17-CV-00081-MKD

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND DENYING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

ECF Nos. 15, 19

BEFORE THE COURT are the parties' cross-motions for summary judgment. ECF Nos. 15, 19.¹ The parties consented to proceed before a magistrate judge. ECF No. 6. The Court, having reviewed the administrative record and the parties' briefing, is fully informed. For the reasons discussed below, the Court

¹ Defendant filed a praecipe to the motion for summary judgment to correct a formatting error. ECF No. 21.

1 grants Plaintiff's motion (ECF Nos. 15) and denies Defendant's motion (ECF Nos.
2 19, 21-1).

3 **JURISDICTION**

4 The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g);
5 1383(c)(3).

6 **STANDARD OF REVIEW**

7 A district court's review of a final decision of the Commissioner of Social
8 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
9 limited; the Commissioner's decision will be disturbed "only if it is not supported
10 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,
11 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a
12 reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159
13 (quotation and citation omitted). Stated differently, substantial evidence equates to
14 "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and
15 citation omitted). In determining whether the standard has been satisfied, a
16 reviewing court must consider the entire record as a whole rather than searching
17 for supporting evidence in isolation. *Id.*

18 In reviewing a denial of benefits, a district court may not substitute its
19 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,
20 1156 (9th Cir. 2001). If the evidence in the record "is susceptible to more than one

1 rational interpretation, [the court] must uphold the ALJ's findings if they are
2 supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674
3 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court "may not reverse an
4 ALJ's decision on account of an error that is harmless." *Id.* An error is harmless
5 "where it is inconsequential to the [ALJ's] ultimate nondisability determination."
6 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ's
7 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*
8 *Sanders*, 556 U.S. 396, 409-10 (2009).

9 **FIVE-STEP EVALUATION PROCESS**

10 A claimant must satisfy two conditions to be considered "disabled" within
11 the meaning of the Social Security Act. First, the claimant must be "unable to
12 engage in any substantial gainful activity by reason of any medically determinable
13 physical or mental impairment which can be expected to result in death or which
14 has lasted or can be expected to last for a continuous period of not less than twelve
15 months." 42 U.S.C. §§ 423(d)(1)(A); 1382c(a)(3)(A). Second, the claimant's
16 impairment must be "of such severity that he is not only unable to do his previous
17 work[,] but cannot, considering his age, education, and work experience, engage in
18 any other kind of substantial gainful work which exists in the national economy."
19 42 U.S.C. §§ 423(d)(2)(A); 1382c(a)(3)(B).

1 The Commissioner has established a five-step sequential analysis to
2 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§
3 404.1520(a)(4)(i)-(v); 416.920(a)(4)(i)-(v). At step one, the Commissioner
4 considers the claimant's work activity. 20 C.F.R. §§ 404.1520(a)(4)(i);
5 416.920(a)(4)(i). If the claimant is engaged in "substantial gainful activity," the
6 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
7 404.1520(b); 416.920(b).

8 If the claimant is not engaged in substantial gainful activity, the analysis
9 proceeds to step two. At this step, the Commissioner considers the severity of the
10 claimant's impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii); 416.920(a)(4)(ii). If the
11 claimant suffers from "any impairment or combination of impairments which
12 significantly limits [his or her] physical or mental ability to do basic work
13 activities," the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c);
14 416.920(c). If the claimant's impairment does not satisfy this severity threshold,
15 however, the Commissioner must find that the claimant is not disabled. 20 C.F.R.
16 §§ 404.1520(c); 416.920(c).

17 At step three, the Commissioner compares the claimant's impairment to
18 severe impairments recognized by the Commissioner to be so severe as to preclude
19 a person from engaging in substantial gainful activity. 20 C.F.R. §§
20 404.1520(a)(4)(iii); 416.920(a)(4)(iii). If the impairment is as severe or more

1 severe than one of the enumerated impairments, the Commissioner must find the
2 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d); 416.920(d).

3 If the severity of the claimant's impairment does not meet or exceed the
4 severity of the enumerated impairments, the Commissioner must pause to assess
5 the claimant's "residual functional capacity." Residual functional capacity (RFC),
6 defined generally as the claimant's ability to perform physical and mental work
7 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§
8 404.1545(a)(1); 416.945(a)(1), is relevant to both the fourth and fifth steps of the
9 analysis.

10 At step four, the Commissioner considers whether, in view of the claimant's
11 RFC, the claimant is capable of performing work that he or she has performed in
12 the past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv); 416.920(a)(4)(iv).

13 If the claimant is capable of performing past relevant work, the Commissioner
14 must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f); 416.920(f).
15 If the claimant is incapable of performing such work, the analysis proceeds to step
16 five.

17 At step five, the Commissioner considers whether, in view of the claimant's
18 RFC, the claimant is capable of performing other work in the national economy.
19 20 C.F.R. §§ 404.1520(a)(4)(v); 416.920(a)(4)(v). In making this determination,
20 the Commissioner must also consider vocational factors such as the claimant's age,

1 education and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v);
2 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the
3 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
4 404.1520(g)(1); 416.920(g)(1). If the claimant is not capable of adjusting to other
5 work, analysis concludes with a finding that the claimant is disabled and is
6 therefore entitled to benefits. 20 C.F.R. §§ 404.1520(g)(1); 416.920(g)(1).

7 The claimant bears the burden of proof at steps one through four above.
8 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
9 step five, the burden shifts to the Commissioner to establish that (1) the claimant is
10 capable of performing other work; and (2) such work “exists in significant
11 numbers in the national economy.” 20 C.F.R. §§ 404.1560(c)(2); 416.960(c)(2);
12 *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

13 **ALJ’S FINDINGS**

14 Plaintiff applied for disability insurance and supplemental security income
15 benefits on October 1, 2012, alleging a disability onset date of April 30, 2007. Tr.
16 210-22. The applications were denied initially, Tr. 141-47, and upon
17 reconsideration. Tr. 149-60. Plaintiff appeared for a hearing before an
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1 administrative law judge (ALJ) on May 14, 2015. Tr. 29-66. On August 13, 2015,
2 the ALJ denied Plaintiff's claim. Tr. 11-28.

3 At step one, the ALJ found Plaintiff has not engaged in substantial gainful
4 activity since April 30, 2007, the alleged onset date. Tr. 16. At step two, the ALJ
5 found Plaintiff has the following severe impairments: fibromyalgia, carpal tunnel
6 syndrome, spine disorder and anxiety disorder. Tr. 16. At step three, the ALJ
7 found that Plaintiff does not have an impairment or combination of impairments
8 that meets or medically equals the severity of a listed impairment. Tr. 17. The
9 ALJ then concluded that Plaintiff has the RFC

10 to perform light work as defined in 20 CFR 404.1567(b) and 416.967(b),
11 except [Plaintiff] can lift and carry 20 pounds occasionally and 10 pounds
12 frequently, sit for six hours of an eight hour work day; stand and walk for six
13 hours of an eight hour work day. [Plaintiff] can occasionally, up to 33% of
14 the workday, use her hands bilaterally for fingering and handling gross and
fine manipulation. She can occasionally climb ramps, stairs, but never climb
ladders and scaffolds. She can occasionally stoop, kneel, crouch and crawl.
[Plaintiff] can understand, remember, and carryout simple instructions. She
is limited to simple, routine and repetitive tasks.

15 Tr. 18. At step four, the ALJ found Plaintiff is unable to perform any past relevant
16 work. Tr. 21. At step five, the ALJ found that considering Plaintiff's age,
17 education, work experience, RFC, and testimony from a vocational expert, there
18 are other jobs that existed in significant numbers in the national economy that
19 Plaintiff could perform such as counter clerk and usher. Tr. 22. The ALJ
20 concluded Plaintiff was not under a disability, as defined in the Social Security

1 Act, from April 30, 2007, the alleged onset date, through the date of the decision.
2 Tr. 22.

3 On December 30, 2016, the Appeals Council denied review, Tr. 1-6, making
4 the ALJ's decision the Commissioner's final decision for purposes of judicial
5 review. *See* 42 U.S.C. § 1383(c)(3).

6 ISSUES

7 Plaintiff seeks judicial review of the Commissioner's final decision denying
8 her disability income benefits under Title II and supplement security income
9 benefits under Title XVI of the Social Security Act. ECF No. 15. Plaintiff raises
10 the following issues for this Court's review:

- 11 1. Whether the ALJ properly weighed Plaintiff's symptom claims; and
- 12 2. Whether the ALJ properly weighed the medical opinion evidence.

13 ECF No. 15 at 9-10.

14 DISCUSSION

15 A. Plaintiff's Symptom Complaints

16 Plaintiff contends the ALJ erred by improperly discrediting her symptom
17 complaints. ECF No. 15 at 10-11. An ALJ engages in a two-step analysis to
18 determine whether a claimant's testimony regarding subjective pain or symptoms
19 is credible. "First, the ALJ must determine whether there is objective medical
20 evidence of an underlying impairment which could reasonably be expected to

1 produce the pain or other symptoms alleged.” *Molina*, 674 F.3d at 1112 (internal
2 quotation marks omitted). “The claimant is not required to show that her
3 impairment could reasonably be expected to cause the severity of the symptom she
4 has alleged; she need only show that it could reasonably have caused some degree
5 of the symptom.” *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009) (internal
6 quotation marks omitted).

7 Second, “[i]f the claimant meets the first test and there is no evidence of
8 malingered, the ALJ can only reject the claimant’s testimony about the severity of
9 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the
10 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (internal
11 citations and quotations omitted). “General findings are insufficient; rather, the
12 ALJ must identify what testimony is not credible and what evidence undermines
13 the claimant’s complaints.” *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th
14 Cir. 1995)); *see also Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002)
15 (“[T]he ALJ must make a credibility determination with findings sufficiently
16 specific to permit the court to conclude that the ALJ did not arbitrarily discredit
17 claimant’s testimony.”). “The clear and convincing [evidence] standard is the most
18 demanding required in Social Security cases.” *Garrison v. Colvin*, 759 F.3d 995,
19 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920,
20 924 (9th Cir. 2002)).

1 In making an adverse credibility determination, the ALJ may consider, *inter*
2 *alia*, (1) the claimant's reputation for truthfulness; (2) inconsistencies in the
3 claimant's testimony or between her testimony and her conduct; (3) the claimant's
4 daily living activities; (4) the claimant's work record; and (5) testimony from
5 physicians or third parties concerning the nature, severity, and effect of the
6 claimant's condition. *Thomas*, 278 F.3d at 958-59.

7 The ALJ found that Plaintiff's medically determinable impairments could
8 reasonably be expected to cause the alleged symptoms; but that Plaintiff's
9 statements concerning the intensity, persistence and limiting effects of these
10 symptoms were "not entirely credible." Tr. 19.

11 *1. Daily Activities*

12 The ALJ found that "the status of [Plaintiff's] impairments justly impose
13 certain limitations on [Plaintiff's] ability to perform work activities, but not to the
14 extreme asserted [Plaintiff]." Tr. 21. A claimant's daily activities may support an
15 adverse credibility finding if (1) the claimant's activities contradict his other
16 testimony, or (2) the claimant "is able to spend a substantial part of [her] day
17 engaged in pursuits involving performance of physical functions that are
18 transferable to a work setting." *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007)
19 (citing *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989)). "The ALJ must make
20 'specific findings relating to [the daily] activities' and their transferability to

1 conclude that a claimant's daily activities warrant an adverse credibility
2 determination." *Orn*, 495 F.3d at 639 (quoting *Burch v. Barnhart*, 400 F.3d 676,
3 681 (9th Cir. 2005)). A claimant need not be "utterly incapacitated" to be eligible
4 for benefits. *Fair*, 885 F.2d at 603.

5 In support of the finding, the ALJ noted that Plaintiff "performs chores
6 around the house" and "she and her children cook on the weekend." Tr. 21. The
7 ALJ did not identify how Plaintiff's activities contradicted her testimony regarding
8 her alleged symptoms and did not make any specific findings that these activities
9 are transferable to a work setting. Tr. 21. Therefore, the ALJ's reliance on
10 Plaintiff's activities in rejecting her reported severity of symptoms fails to meet the
11 specific, clear and convincing standard. *See Garrison*, 759 F.3d at 1016 (citing
12 *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998) ("Recognizing that 'disability
13 claimants should not be penalized for attempting to lead normal lives in the face of
14 their limitations,' we have held that '[o]nly if [his] level of activity were
15 inconsistent with [a claimant's] claimed limitations would these activities have any
16 bearing on [his] credibility.'")).

17 2. *Failure to Follow Treatment Recommendations*

18 Next, the ALJ discredited Plaintiff's symptom testimony because Plaintiff
19 "though described as cooperative in therapy sessions, does not appear as
20 committed when her missed appointments are considered." Tr. 21. It is well-

1 established that unexplained or inadequately explained non-compliance with
2 treatment reflects on a claimant's credibility. *See Molina*, 674 F.3d at 1113-14;
3 *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008); *see also Smolen v.*
4 *Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996) (an ALJ may consider a claimant's
5 unexplained or inadequately explained failure to follow a prescribed course of
6 treatment when assessing a claimant's credibility). The ALJ noted that Plaintiff
7 "missed several of her scheduled appointments" at Frontier Behavioral Health and
8 "began to skip her scheduled appointments" at Catholic Charities Counseling. Tr.
9 20-21. In support of the finding, the ALJ provided no citation to the record. The
10 ALJ failed to indicate how many appointments were missed or under what
11 circumstances. From the Court's independent review, it appears that as though
12 Plaintiff missed two sessions at Frontier Behavioral Health, Tr. 555-575, 585-91,
13 and missed four out of 20 sessions at Catholic Charities Counseling, Tr. 640-83.²

15 ² In the Court's independent review of the Frontier Behavioral Health records, Tr.
16 555-75, 585-91, Plaintiff failed to attend two appointments. Tr. 585. One session
17 appears to have been cancelled by the treatment provider due to the treatment
18 provider being required to appear in court. Tr. 574.

19 In the Court's independent review of the Catholic Charities Counseling records, it
20 appears as though Plaintiff was scheduled for weekly appointments from late-

1 The treatment provider consistently noted that Plaintiff was “active and engaged”
2 in her sessions. Tr. 661, 663, 667, 668, 671, 672, 674, 675, 678, 679, 680, 683.
3 There is no indication in the treatment provider’s records that Plaintiff failed to
4 follow the recommended course of treatment. Moreover, the ALJ failed to
5 articulate a specific treatment recommendation that was not followed by Plaintiff.
6 Thus, this was not a clear and convincing reason to discredit Plaintiff’s symptom
7 complaints. Additionally, although failure to attend mental health treatment
8 appointments may in some cases bear on the credibility of Plaintiff’s mental health
9 symptom complaints, such failure does not address the credibility of Plaintiff’s
10 symptom complaints related to her physical impairments. As such, this is not a
11 clear and convincing reason to discredit Plaintiff’s symptom complaints regarding
12 her physical impairments.

13 3. *Lack of Objective Medical Evidence*

14 Although not entirely clear, it appears as though the ALJ concluded that the
15 medical evidence does not support greater limitations than those set forth in the
16 _____

17 October 2014 to mid-March 2015, totally approximately 20 appointments. Tr.
18 640-683. It appears as though Plaintiff missed two appointments due to medical
19 issues, which appointments were rescheduled, Tr. 673-74, 676-77, and failed to
20 attend treatment sessions on four occasions, Tr. 664, 669, 670, 681.

1 RFC. Tr. 19-21. An ALJ may not discredit a claimant's symptom testimony and
2 deny benefits solely because the degree of the symptoms alleged is not supported
3 by objective medical evidence. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir.
4 2001); *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir. 1991); *Fair*, 885 F.2d at
5 601. However, the medical evidence is a relevant factor in determining the
6 severity of a claimant's pain and its disabling effects. *Rollins*, 261 F.3d at 857; 20
7 C.F.R. §§ 404.1529(c)(2); 416.929(c)(2). Minimal objective evidence is a factor
8 which may be relied upon in discrediting a claimant's testimony, although it may
9 not be the only factor. *See Burch*, 400 F.3d at 680.

10 In the decision, the ALJ set forth Plaintiff's testimony and medical evidence
11 from the record demonstrating a lack of support for the severity of symptoms
12 Plaintiff alleged. Tr. 18-21. However, because the ALJ's other reasons failed to
13 meet the specific, clear and convincing standard, *see supra*, this reason alone is
14 insufficient to support her determination.

15 In conclusion, the ALJ failed to properly support the determination that
16 Plaintiff's symptoms complaints were less than fully credible. Therefore, this case
17 is remanded for the ALJ to hold additional proceedings and properly address
18 Plaintiff's symptom statements.

1 **B. Medical Opinion Evidence**

2 Plaintiff contends the ALJ improperly weighed the medical opinions of
3 Jeanette Higgins, Psy.D.; Mahlon Dalley, Ph.D.; and Judy Panek, M.D. ECF No.
4 15 at 11-16.

5 There are three types of physicians: “(1) those who treat the claimant
6 (treating physicians); (2) those who examine but do not treat the claimant
7 (examining physicians); and (3) those who neither examine nor treat the claimant
8 but who review the claimant’s file (nonexamining or reviewing physicians).”
9 *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (brackets omitted).
10 “Generally, a treating physician’s opinion carries more weight than an examining
11 physician’s, and an examining physician’s opinion carries more weight than a
12 reviewing physician’s.” *Id.* “In addition, the regulations give more weight to
13 opinions that are explained than to those that are not, and to the opinions of
14 specialists concerning matters relating to their specialty over that of
15 nonspecialists.” *Id.* (citations omitted).

16 If a treating or examining physician’s opinion is uncontradicted, an ALJ may
17 reject it only by offering “clear and convincing reasons that are supported by
18 substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).
19 “However, the ALJ need not accept the opinion of any physician, including a
20 treating physician, if that opinion is brief, conclusory and inadequately supported

1 by clinical findings.” *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228
2 (9th Cir. 2009) (internal quotation marks and brackets omitted). “If a treating or
3 examining doctor’s opinion is contradicted by another doctor’s opinion, an ALJ
4 may only reject it by providing specific and legitimate reasons that are supported
5 by substantial evidence.” *Bayliss*, 427 F.3d at 1216 (citing *Lester*, 81 F.3d at 830-
6 31).

7 *1. Dr. Higgins*

8 Dr. Higgins conducted a psychological evaluation of Plaintiff on January 18,
9 2013. Tr. 539-42. Dr. Higgins diagnosed Plaintiff with major depressive disorder,
10 recurrent, moderate; anxiety disorder nos; and pain disorder related to
11 psychological factors and a general medical condition. Tr. 541. Dr. Higgin opined
12 that Plaintiff’s abilities to understand, remember, and carry out complex
13 instructions and to make complex work-related decisions were moderately limited.
14 Tr. 541-42. Dr. Higgins further opined that Plaintiff likely had the ability to
15 interact appropriately with the public under low-pressure conditions and she had
16 the ability to appropriately interact with a supervisor and coworkers who are
17 supportive and tolerant. Tr. 542. Although the ALJ credited many of Dr. Higgins
18 medical opinions, the ALJ gave “less weight” to the opinion that Plaintiff requires
19 low-pressure work conditions and supportive/tolerant supervisors and coworkers.
20 Tr. 20.

1 The ALJ articulated one reason for rejecting the more extreme limitations:
2 that Dr. Higgins found that Plaintiff was a questionable historian. Tr. 20. A
3 physician's opinion may be rejected if it based on a claimant's subjective
4 complaints which were properly discounted. *Tonapetyan v. Halter*, 242 F.3d 1144,
5 1149 (9th Cir. 2001); *Morgan v. Comm'r of Soc. Sec Admin.*, 169 F.3d 595, 602
6 (9th Cir. 1999); *Fair*, 885 F.2d at 604. "[W]hen an opinion is not more heavily
7 based on a patient's self-reports than on clinical observations, [this] is no
8 evidentiary basis for rejecting the opinion." *Ghanim*, 763 F.3d at 1162. As
9 discussed *supra*, the ALJ failed to provide legally sufficient reasons for rejecting
10 Plaintiff's symptom complaints. In addition, the ALJ did not conclude that Dr.
11 Higgins relied more heavily on Plaintiff's subjective reports than the evaluation
12 she conducted. Dr. Higgins' finding that Plaintiff was a questionable historian,
13 without explanation as to how such a finding impacted the opined functional
14 limitation at issue, is not a specific and legitimate reason to discredit Dr. Higgins'
15 opinion.

1 Because the case is being remanded to readdress the Plaintiff's symptom
2 claims, the ALJ will also readdress the medical source opinions on remand,
3 including that of Dr. Higgins.

4 2. *Dr. Dalley*

5 Dr. Dalley conducted a psychological/psychiatric evaluation of Plaintiff on
6 August 8, 2013, Tr. 579-84, and diagnosed Plaintiff with major depressive
7 disorder, recurrent, severe without psychotic processes; post-traumatic stress
8 disorder, chronic; generalized anxiety disorder; and panic disorder without
9 agoraphobia, Tr. 581. Dr. Dalley opined that Plaintiff has severe limitations on her
10 abilities to perform activities within a schedule, maintain regular attendance, and
11 be punctual within customary tolerances without special supervision; to adapt to
12 changes in a routine work setting; complete a normal work day and work week
13 without interruptions from psychologically based symptoms; and maintain
14 appropriate behavior in a work setting. Tr. 581-82. The ALJ gave Dr. Dalley's
15 opinions little weight. Tr. 20.

16 The ALJ discounted Dr. Dalley's opinions, concluding they "are not
17 consistent with the consensus of other medical opinions that find the claimant is
18 capable of performing significant work-related activities." Tr. 20. The
19 consistency of a medical opinion with the record as a whole is a relevant factor in
20 evaluating that medical opinion. *Orn*, 495 F.3d at 631.

1 Here, the ALJ's general conclusion failed to provide any specific details or
2 citations to support the finding. In the Ninth Circuit, it is incumbent upon the ALJ
3 to more thoroughly evaluate the opinion:

4 To say that medical opinions are not supported by sufficient objective
5 findings or are contrary to the preponderant conclusions mandated by the
6 objective findings does not achieve the level of specificity our prior cases
7 have required, even when the objective factors are listed seriatim. The ALJ
8 must do more than offer his conclusions. He must set forth his own
9 interpretations and explain why they, rather than the doctors', are correct.

10 *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988) (internal footnote
11 omitted). The ALJ's conclusory statement is insufficient because it provides no
12 details to assess the basis for the ALJ arriving at this conclusion.³ *Id.*; *McAllister v.*
13 *Sullivan*, 888 F.2d 599, 602 (9th Cir. 1989) (the ALJ's rejection of a physician's
14 opinion on the ground that it was contrary to clinical findings in the record was
15 "broad and vague, failing to specify why the ALJ felt the treating physician's
16 opinion was flawed").

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18
19 ³ The ALJ offered the same reason to discredit Dr. Dalley's assessed GAF score.
20 Tr. 20. The Court finds this analysis similarly insufficient.

1 Because the case is being remanded to readdress the Plaintiff's symptom
2 claims, the ALJ will also readdress the medical source opinions on remand,
3 including that of Dr. Dalley.

4 *3. Dr. Panek*

5 Dr. Panek testified as a medical expert after reviewing Plaintiff's medical
6 record. Tr. 42-49. Dr. Panek opined that Plaintiff suffers from degenerative disc
7 disease, minimal carpal tunnel syndrome on the right side, and mild sensory
8 peripheral neuropathy. Tr. 42-49; *see also* Tr. 19. The ALJ gave "great weight" to
9 Dr. Panek's testimony and concluded that Plaintiff's "subject complaints of back
10 pain, reduction of the ability to use her hands and numbness is supported by the
11 medical record." Tr. 19.

12 Plaintiff contends the determination that Plaintiff suffers from back pain and
13 reduction of the ability to use her hands is not reflected in the RFC or the
14 hypothetical posed to the vocational expert. ECF No. 15 at 15. To the contrary,
15 the ALJ restricted Plaintiff to light exertional level work and assessed significant
16 manipulation limitations. Tr. 18. Specifically, the ALJ concluded that "the light
17 exertional level is consistent with [Plaintiff's] subjective complaints of back pain
18 and the evidence of degenerative disc disease. In addition, the restrictive
19 limitations for fingering and gross manipulation are appropriate based upon the
20 nerve conduction study and positive Tinel's and Phalen's tests." Tr. 19-20.

1 Plaintiff has utterly failed to identify any functional limitations assessed by Dr.
2 Panek that were not incorporated into the RFC.

3 **C. Remedy**

4 The decision whether to remand for further proceedings or reverse and
5 award benefits is within the discretion of the district court. *McAllister*, 888 F.2d at
6 603. To reverse and award of benefits, the Court must find that the record has
7 been fully developed and further administrative proceedings would not be useful.
8 *Garrison*, 759 F.3d at 1019-20; *Varney v. Sec. of Health and Human Servs.*, 859
9 F.2d 1396, 1399 (9th Cir. 1988). But where there are outstanding issues that must
10 be resolved before a determination can be made, and it is not clear from the record
11 that the ALJ would be required to find a claimant disabled if all the evidence were
12 properly evaluated, remand is appropriate. *See Benecke v. Barnhart*, 379 F.3d 587,
13 595-96 (9th Cir. 2004); *Harman v. Apfel*, 211 F.3d 1172, 1179-80 (9th Cir. 2000).

14 Here, it is not clear from the record that the ALJ would be required to find
15 Plaintiff disabled if all the evidence were properly evaluated. Further proceedings
16 are necessary for the ALJ to properly address Plaintiff's symptom claims and the
17 medical source opinions. The ALJ is instructed to supplement the record with any
18 outstanding evidence and take testimony from a medical and a vocational expert at
19 a remand hearing.

1 **CONCLUSION**

2 **IT IS ORDERED:**

3 1. Plaintiff's motion for summary judgment (ECF No. 15) is **GRANTED**
4 and the matter is **REMANDED** to the Commissioner for additional proceedings
5 consistent with this order.

6 2. Defendant's motion for summary judgment (ECF No. 19) is **DENIED**.

7 3. Application for attorney fees may be filed by separate motion.

8 The District Court Executive is directed to file this Order, enter
9 **JUDGMENT FOR THE PLAINTIFF**, provide copies to counsel, and **CLOSE**
10 **THE FILE**.

11 DATED March 12, 2018.

12 s/Mary K. Dimke
13 MARY K. DIMKE
14 UNITED STATES MAGISTRATE JUDGE
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